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4 The Honorable Barbara J. Rothstein
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 IN RE: PHENYLPROPANOLAMINE
10 (PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

CASE MANAGEMENT ORDER
NO. 17C REMAND OF CASES

11 _____
12 This document relates to all
13 actions.
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15 This case management order replaces and supercedes Case
16 Management Order ("CMO") Nos. 17, 17A and 17B.

17 I. INTRODUCTION

18 Proceedings in this MDL 1407 began in earnest with the Order
19 re Initial Conference dated November 1, 2001, requiring plaintiffs
20 and defendants to submit proposed committee rosters, and scheduling
21 the initial conference in this MDL for November 16, 2001. Since
22 then: (1) generic fact discovery (including written discovery,
23 document production and review, discovery depositions, and requests
24 for admissions) has been completed or substantially completed as to
25 most MDL defendants for which "common benefit" discovery is being
26 undertaken by the Plaintiffs; (2) a procedure for case-specific

ORDER

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1 fact discovery in each case has been implemented, and discovery
2 pursuant thereto in cases subject to these MDL proceedings has been
3 underway since 2002; (3) Rule 26 disclosures of generic experts
4 have been made, discovery depositions of those experts are
5 complete; and a process has been established to permit the adoption
6 of those experts' opinions in other cases transferred or being
7 transferred to this MDL; (4) trial preservation depositions of
8 several of plaintiffs' and defendants' generic experts are underway
9 or have been taken; (5) and *Daubert* motions have been filed
10 challenging plaintiffs' generic medical experts' opinions as to
11 general causation, briefing, and hearings on said motions have been
12 completed, and the Court has issued its Decision on said motions.

13 Given the foregoing, the Court is satisfied that this Multi-
14 District Litigation has sufficiently matured, such that, subject to
15 the following procedures and conditions, qualified cases may now be
16 considered by the Court for purposes of issuing a Suggestion of
17 Remand Order to facilitate their remand by the Judicial Panel on
18 Multidistrict Litigation ("JPML") to their transferor courts for
19 further case-specific proceedings and final disposition.

20 **II. REMAND CRITERIA- RIPENESS**

21 Generic fact discovery of defendants was required to be
22 completed within specific time periods, as set forth in CMO No. 1,
23 subject to certain extensions of time. Discovery as to experts on
24 general causation, and issues of general applicability, was
25 required to be completed by no later than March 10, 2003, with
26 subsequently transferred cases subject to the provisions of CMO No.

1 9, providing for the adoption of or designation of experts on
2 issues of general applicability. Case-specific fact discovery of
3 plaintiffs in each case subject to these MDL proceedings was
4 required to be completed within specific time periods depending on
5 when each case was docketed in these proceedings, as set forth in
6 CMO Nos. 6 and 6A.

7 In any case docketed in this MDL, a case will only be
8 considered ripe for remand if the case is in compliance with CMOs
9 Nos. 1, 6, 6A, 10, 13, 13A, 15, and any additional orders entered
10 by this Court. Specifically, all of the following criteria must
11 have been completed and/or fulfilled before a case will be
12 considered ripe for remand:

13 . Plaintiff's fact sheet must be substantially complete per CMO
14 Nos. 6 and 6A and all identified deficiencies must be corrected
per CMO Nos. 6, 6A and 10;

15 . Plaintiff must have executed all appropriate authorizations,
16 including new HIPAA-compliant authorizations if requested by
defendants, as required by CMO Nos. 6 and 6A;

17 . Any permitted and timely filed discovery propounded by
18 defendant(s) pursuant to CMO Nos. 6, 6A, or 10 must have been
completed with no discovery disputes remaining unresolved;

19 . The deadline, as the same may have been extended by
20 stipulation or Court order, for case-specific fact discovery
must have passed and not be subject to any extensions under CMO
21 Nos. 6, 6A or 10;

22 . If applicable to the case, plaintiff must have complied with
the requirements of CMO No. 15 and any additional orders
23 entered by this Court;

24 . The deadline for adopting or identifying generic experts per
CMO No. 9 must have passed;

25 . Any summary judgment motion arising from the Court's *Daubert*
26 Order entered June 18, 2003, applicable to the case must have
been ruled upon.

1 **III. REMAND PROCEDURE**

2 **A. Spreadsheet of Cases Ripe for Remand**

3 On July 1, 2004, liaison counsel for defendants shall provide
4 to the court and to liaison counsel for plaintiffs a spreadsheet
5 listing all cases deemed ripe for remand as of June 1, 2004, using
6 the criteria set forth in Section II of this order. This
7 spreadsheet shall include the following information as to each
8 case: case caption, MDL cause number, transferor court, identity of
9 all defendants, and fact discovery deadline. Defense liaison
10 counsel shall provide this spreadsheet to the court and to liaison
11 counsel for plaintiffs in electronic form.

12 Counsel shall provide similar spreadsheets on August 2, 2004,
13 September 1, 2004, October 1, 2004, and thereafter as directed by
14 the court. Each of these subsequent spreadsheets shall identify
15 cases that are considered ripe for remand as of the date of the
16 previous spreadsheet, but shall not include any cases that were
17 included on a previous spreadsheet. (For example, the spreadsheet
18 filed on August 2, 2004, will identify those cases that are
19 considered ripe for remand as of July 1, 2004, but not those cases
20 that were included on the July 1, 2004 spreadsheet.)

21 While it shall be the responsibility of defense liaison
22 counsel to provide the spreadsheets, any party to a case may file
23 a notice of ripeness for remand on the monthly dates specified by
24 the court.

25 **B. Orders to Show Cause**

26 The court will issue orders to show cause why each case

1 designated as ripe for remand should not be remanded. The orders
2 will set forth the dates by which objections and replies shall be
3 filed, together with noting dates.

4 **C. Objections and Responses**

5 Any party to a case may submit an objection to the remand of
6 a particular case as directed in the court's orders to show
7 cause. Objections shall be limited to ten (10) double-spaced
8 pages, and responses shall be limited to five (5) pages.
9 Objections and responses must be served on liaison counsel, as
10 well as counsel of record in the case to be remanded. To the
11 extent possible, service upon liaison counsel should be
12 electronic. There shall be no hearings permitted on any given
13 show cause order except by leave of court.

14 **D. Eligibility for Remand**

15 The court has appointed Magistrate Judge Theiler to consider
16 and rule on objections filed pursuant to Section III(c), above.
17 Any case in which a show cause order has issued will be deemed
18 eligible for remand if (a) no written objection is filed by the
19 date specified in the court's order, or (b) upon Magistrate judge
20 Theiler overruling all objections to remand of that case.

21 A party whose case has been deemed not eligible for remand
22 as a result of a successful objection may resubmit the case on
23 the dates set forth herein, after curing the grounds on which the
24 objection was sustained.

25 **E. Suggestion of Remand Order**

26 Following Magistrate Judge Theiler's determination

1 regarding eligibility, the court will issue a Suggestion of
2 Remand Order to be forwarded to the JPML, containing the names of
3 the cases the court views as appropriate for remand. Issuance of
4 a Suggestion of Remand Order triggers the Alternative Dispute
5 Resolution requirements contained in CMO 18B for the cases listed
6 in that order.

7 **F. Conditional Remand Order from the JPML**

8 Within seven (7) days of the date that a Conditional Remand
9 Order is filed by the JPML with this transferee court, the
10 parties will submit a joint proposed Final MDL Pretrial Order for
11 the Court's signature. Such order will describe the events that
12 have taken place in MDL 1407 and those items that require further
13 action by the transferor court. A copy of the Final MDL Pretrial
14 Order, along with the case file and materials, will be provided
15 to the transferor court.

16 **IV. CONCLUSION**

17 As the remand process progresses, it may become clear that
18 aspects of this procedure could benefit from modification in
19 order to make improvements or to lessen the burden on any
20 participant in this process. Such participants may include the
21 JPML, the parties, this court, any of the transferor courts, the
22 Special Master Francis McGovern, or Magistrate Judge Theiler. The
23 parties are instructed to confer prior to proposing changes to
24 this procedure.

1 DATED this 23rd day of June, 2004.

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3 s/ Barbara Jacobs Rothstein
4 Barbara Jacobs Rothstein
5 United States District Court Judge
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